

NOTICE: Summary decisions issued by the Appeals Court pursuant to its rule 1:28, as amended by 73 Mass. App. Ct. 1001 (2009), are primarily directed to the parties and, therefore, may not fully address the facts of the case or the panel's decisional rationale. Moreover, such decisions are not circulated to the entire court and, therefore, represent only the views of the panel that decided the case. A summary decision pursuant to rule 1:28 issued after February 25, 2008, may be cited for its persuasive value but, because of the limitations noted above, not as binding precedent. See Chace v. Curran, 71 Mass. App. Ct. 258, 260 n.4 (2008).

COMMONWEALTH OF MASSACHUSETTS

APPEALS COURT

15-P-1425

COMMONWEALTH

vs.

NICHOLAS C. PILALAS.

MEMORANDUM AND ORDER PURSUANT TO RULE 1:28

After a jury trial, the defendant was convicted of murder in the second degree. He filed a posttrial motion, pursuant to Mass.R.Crim.P. 25(b)(2), as amended, 420 Mass. 1502 (1995), seeking to reduce the verdict to manslaughter; the trial judge denied the motion. The defendant now appeals, asserting that the motion should have been allowed. We affirm.

The defendant was indicted and convicted after he fatally stabbed a man during a physical altercation arising out of his persistent and heated verbal exchanges with two groups of strangers, whom he had accosted shortly after midnight while he was driving alone on a rural street near his home. In denying the motion, the judge concluded that, while it was a "very close" call, there was no weakness in the evidence or other reason to suggest that the verdict resulted in a miscarriage of